

2011 DRAFTING REQUEST**Bill**Received: **10/28/2011**Received By: **mkunkel**Wanted: **As time permits**

Companion to LRB:

For: **Public Service Commission**By/Representing: **John Lorence**

May Contact:

Drafter: **mkunkel**Subject: **Public Util. - misc.**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**Requester's email: **john.lorence@wisconsin.gov**Carbon copy (CC:) to: **elise.nelson@wisconsin.gov****Pre Topic:**

No specific pre topic given

Topic:

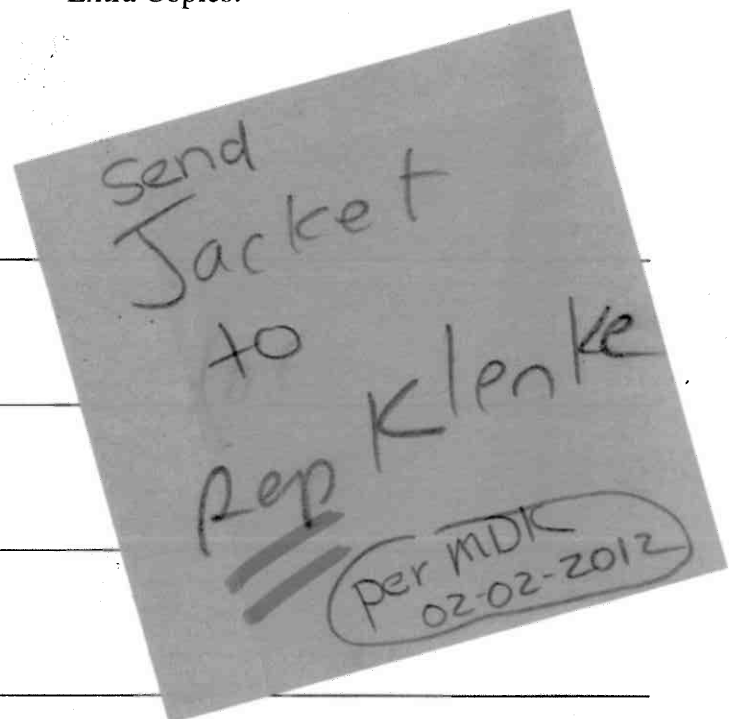
Omnibus PSC changes

Instructions:

See attached

Drafting History:

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*For Rep Klenke's
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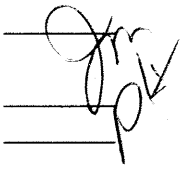
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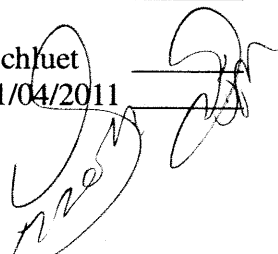
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Kunkel, Mark

From: Lorence, John - PSC [John.Lorence@wisconsin.gov]
Sent: Thursday, October 27, 2011 10:07 AM
To: Kunkel, Mark
Subject: PSC Fall 2011 drafting request - cover e-mail
Attachments: Compiled List of PSC Fall 2011 Drafting Requests.xlsx

Mr. Kunkel:

I have been asked to submit a drafting request to the LRB for the preparation of a compiled bill draft consisting of 9 parts. Attached to this e-mail is an Excel document identifying briefly the 9 component parts of the compiled draft.

I will send you each of the 9 drafting items individually, each with a short explanation of the issue it addresses and suggested language. The drafts are identified by item number on the attached compiled list.

I may need to send these to you in multiple e-mails.

Please let me know if you have questions on any of the drafting instructions. You may use me as the contact person for this request. Kristin Ruesch and R.J. Pirlot may also be able to assist if I am not available.

John Lorence
Assistant General Counsel
Public Service Commission of Wisconsin
610 N. Whitney Way
P.O. Box 7854
Madison, WI 53707-7854
Phone: (608) 266-8128
Fax: (608) 266-3957
E-mail: john.lorence@wisconsin.gov
Web page: <http://psc.wi.gov>

10/27/2011

Number	Issue	Recommendation	Status
1	Affiliated Interest Transactions	Raise review threshold to \$250K; index for inflation; insert a reasonable timeline for decisions	
2	Certificates of Authority	Define statutory cost thresholds then index	
3	Time Limits for CA's	Non-hearing: 90/90 days; Hearing 180/180 days	
4	RRC Update	WI law updates to reflect market practices	
5	Abandonment of Service Drops	Eliminate provision stating a utility currently may not abandon a line without Commission prior approval	
6	Notice to Parties	Notice by mail is inefficient and expensive; other communication methods are warranted	
7	Effective Date of PSC Decisions	Orders and determinations take effect the day after filing	

8	<p>Affiliated Interest for WPS for small peaking hydro power</p>	<p>Allow WRPC to sell power to affiliate utilities using contracts longer than three years</p>	
9	<p>Ethics reforms</p>	<p>Prohibit political fundraising events, political activity, for commissioners</p>	

Kunkel, Mark

From: Lorence, John - PSC [John.Lorence@wisconsin.gov]

Sent: Thursday, October 27, 2011 10:16 AM

To: Kunkel, Mark

Subject: PSC Fall 2011 drafting request - Items 1, 3, and 5

Attachments: Item 1 affiliated interest transactions.docx; Item 3 time limits for CA applications.docx; Item 5 abandonment of service drops .docx

Attached to this e-mail are the drafting instructions for the following items on the PSC Fall 2011 compiled list:

- Item 1, affiliated interest transactions
- Item 3, time limits for certificate of authority review
- Item 5, abandonment of service line drops

10/27/2011

PSC PROPOSED LEGISLATIVE CHANGES

FALL 2011

Item #1 Affiliated Interest Transactions

This draft raises the threshold for commission review of an affiliated interest transaction from \$25,000 to \$250,000 and indexes that number for inflation. The draft also sets timeframes for the commission to act on an affiliated interest application. Most affiliated interest transactions filed with the commission do not require a hearing; in these situations, the commission shall take final action on an application within 90 days after opening a docket to review the application.

SECTION # 196.52 (3) (b) 1. of the statutes is amended to read:

196.52 (3) (b) 1. The requirement for written approval under par. (a) shall not apply to any contract or arrangement if the amount of consideration involved is not in excess of ~~\$25,000~~ the threshold amount in subd. 1m. or 5% of the equity of the public utility, whichever is smaller. The requirement under par. (a) also does not apply to a telecommunications utility contract or arrangement or to contracts or arrangements with joint local water authorities under s. 66.0823. Regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount may not be broken down into a series of transactions to come within the exemption under this paragraph. Any transaction exempted under this paragraph shall be valid or effective without commission approval under this section.

SECTION # 196.52 (3) (b) 1m. of the statutes is created to read:

196.52 (3) (b) 1m. The threshold amount for subd. 1 is \$250,000. In 2014 and biennially thereafter, the commission shall adjust this threshold amount to reflect adjustments to the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, and disseminate the adjusted threshold on the commission's website.

SECTION # 196.52 (3) (d) of the statutes is created to read:

196.52 (3) (d) If a hearing is held, the commission shall take final action on an application filed under this subsection within 180 days after the commission issues a notice of hearing on the application. The chairperson of the commission may extend the time period for an additional 180 days for good cause. If the commission fails to take final action within the initial 180-day period, or the extended 180-day time period, the commission is considered to have approved the application.

(b) If a hearing is not held, the commission shall take final action on an application filed under this subsection within 90 days after the commission issues a notice opening a docket on the application. If the commission fails to take final action within the initial 90-day period, the commission is considered to have approved the application.

SECTION # **Initial Applicability.** The treatment of 196.52 (3) (b) 1., 1m. and (d) of the statutes first applies to an application under s.196.52 (3), Stats., filed with the public service commission on the effective date of this section.

(End, Item 1)

**PROPOSED LEGISLATIVE CHANGES
FALL 2011**

Item 3, Time limits for Certificates of Authority

This draft requires the commission to act on an application for a certificate of authority under Wis. Stat. § 196.49 (1), (2), (3) or (5) within 90 days if no hearing is held and within 180 days if a hearing is held. The chairperson of the commission may extend the time period an additional 90 or 180 days, respectively, if good cause is shown. If the commission does not take final action within the applicable time period, the application is considered approved.

SECTION # 196.49 (5r) of the statutes is created to read:

196.49 (5r) (a) If a hearing is held, the commission shall take final action on an application filed under subs. (1), (2), (3) or (5) within 180 days after the commission issues a notice of hearing on the application. The chairperson of the commission may extend the time period for an additional 180 days for good cause. If the commission fails to take final action within the initial 180-day period, or the extended 180-day time period, the commission is considered to have issued a certificate of authority with respect to the application.

(b) If a hearing is not held, the commission shall take final action on an application filed under subs. (1), (2), (3) or (5) within 90 days after the commission issues a notice opening a docket on the application. The chairperson of the commission may extend the time period for an additional 90 days for good cause. If the commission fails to take final

action within the initial 90-day period, or the extended 90-day time period, the commission is considered to have issued a certificate of authority with respect to the application.

SECTION # Initial Applicability. The treatment of 196.49 (5r) of the statutes first applies to an application under s.196.49 (1), (2), (3) or (5), Stats., filed with the public service commission on the effective date of this section.

(End, Item 3)

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PROPOSED LEGISLATIVE CHANGES

FALL 2011

ITEM 5 Abandonment of Service Drops

Explanation Under s. 196.80 (1), Stats., a utility may not abandon or discontinue a line, extension or service without the Commission's prior approval. Some utilities interpret this requirement to extend to situations where a customer requests that the utility remove the customer's own electric service drop or lateral, which is the secondary voltage line starting from the nearest transformer and extending across the customer's property to the customer's building, or starting from a distribution pedestal and extending underground to the customer's building. These situations do not fit within the intent of the statute, when the utility is acting at the customer's request. Furthermore a customer will often need the service drop or service lateral removed on short notice, such as when construction activities are scheduled on the property, and this can artificially elevate the priority of a utility's request to the Commission for advance approval.

Commission rules already define "service drop" and "service lateral." See Wis. Admin. Code s. PSC 113.1003 (10) and (12).

This draft also permits a utility to abandon an associated primary voltage line if that line is used exclusively to serve the customer requesting the service removal. There are situations where there is a section of "primary" line across the customer's property connecting the distribution system to the yard pole where the transformer is located. In these situations, that section of "primary" line serves the same purpose as the service drop; it is used solely to provide service to that customer. To the extent that a primary

line only serves the customer requesting the removal, this draft permits removal of the primary segment of the service drop as well without requiring abandonment approval.

SECTION # 196.81 (3) of the statutes is amended to read:

196.81 (3) This section does not apply to a:

(a) A service discontinuance by a public utility that is a telecommunications provider.

✓ SECTION # 196.81 (3) (b) of the statutes is created to read:

196.81 (3) (b) A customer's request to remove the customer's electric service drop or electric service lateral, including any primary voltage line that is used exclusively to serve the customer requesting the removal.

(End Item 5)

O:\2011-2012 Legislative Drafting\Fall 2011 Proposals\Item 5 abandonment of service drops.docx

Kunkel, Mark

From: Lorence, John - PSC [John.Lorence@wisconsin.gov]

Sent: Thursday, October 27, 2011 10:31 AM

To: Kunkel, Mark

Subject: PSC Fall 2011 drafting request - Items 6 and 7

Attachments: Item 6 notice to parties.docx; Item 7 effective date of PSC decisions.docx

Attached to this e-mail are the drafting instructions for the following items on the PSC Fall 2011 compiled list:

- Item 6, notice to parties
- Item 7, effective date of PSC decisions

Items 6 and 7 will need to be reconciled in the compiled draft.

10/27/2011

**PROPOSED LEGISLATIVE CHANGES
FALL 2011**

General PSC Practice and Procedure

Notice to Parties

Explanation: With the widespread use of the Internet and the Public Service Commission's Electronic Regulatory Filing System, mailing is no longer the most efficient or preferred means to notify parties and interested persons of Commission proceedings, hearings and decisions. Notice by mail can be inefficient and expensive. For example, in one docket the Commission's mailing list included approximately 600 names.

SECTION 1. 196.40 of the statutes is amended to read:

196.40 Orders and determinations; time of taking effect. Every order or determination of the commission shall take effect 20 days after the order or determination has been filed and served by personal delivery ~~or mail to~~, mail, e-mail, posting on the commission's website or other method likely to reach all parties to the proceeding in which the order or determination was made ~~or to their attorneys~~, unless the commission specifies a different date upon which the order or determination shall be effective. After the effective date every order or determination shall be on its face lawful and reasonable unless a court determines otherwise under s. 227.57.

SECTION 2. 227.44 (1) of the statutes is amended to read:

227.44 (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Except in the case of an emergency, ~~reasonable notice shall consist of mailing notice to known~~ notification by personal delivery, mail, e-mail, posting on the agency's website

(to parties or attorneys to)

or other method likely to reach interested parties at least 10 days prior to the hearing constitutes
reasonable notice.

SECTION 3. 227.48 (1) of the statutes is amended to read:

227.48 (1) Every decision when made, signed and filed, shall be served forthwith by personal
delivery ~~or mailing of a copy to~~, mail, e-mail, posting on the agency's website or other method
likely to reach each party to the proceedings or to the party's attorney of record.

(End, Item 6)

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**PROPOSED LEGISLATIVE CHANGES
FALL 2011**

General PSC Practice and Procedure

Effective date of PSC decisions

Explanation: The Commission's standard practice is to add a provision to each order or determination specifying that, pursuant to s. 196.40, Stats., the order or determination takes effect the day after mailing. This statutory change will eliminate the need for such a provision.

SECTION 1. 196.40 of the statutes is amended to read:

196.40 Orders and determinations; time of taking effect. Every order or determination of the commission shall take effect ~~20 days~~ the day after the order or determination has been filed and served by personal delivery or mail to all parties to the proceeding in which the order or determination was made or to their attorneys, unless the commission specifies a different date upon which the order or determination shall be effective. After the effective date every order or determination shall be on its face lawful and reasonable unless a court determines otherwise under s. 227.57.

(End, Item 7)

Kunkel, Mark

From: Lorence, John - PSC [John.Lorence@wisconsin.gov]

Sent: Thursday, October 27, 2011 10:47 AM

To: Kunkel, Mark

Subject: PSC Fall 2011 drafting request - Items 8 and 9

Attachments: Item 8 small hydro affiliated interest exemption.docx; Item 9 ethics reform.docx

Attached to this e-mail are the drafting instructions for the following items on the PSC Fall 2011 compiled list:

- Item 8, small hydro affiliated interest exemption
- Item 9, ethics reform

I will send you drafts for Item 2, certificates of authority cost thresholds, and Item 4, Renewable Resource Credit update, as soon as I can.

PSC PROPOSED LEGISLATIVE CHANGES

FALL 2011

Item #8

Drafting instructions:

Wisconsin River Power Company (WRPC) filing - This is an entity co-owned by Wisconsin Power and Light Company (WPL) and Wisconsin Public Service Corporation (WPS). It includes the Castle Rock and Petenwell hydroelectric projects on the Wisconsin River that are regulated by the Federal Energy Regulatory Commission (FERC), and one natural gas peaker plant installed in 2003. With the addition of the peaking unit the total output exceeds 50 MW, thereby removing the structures from property tax rolls and putting them on the gross receipts tax, lowering the cost to utility customers.

Problem: The co-owners purchase the power from WRPC's generation units under FERC-approved contracts. Because WRPC is an "affiliate" of the co-owners, their power purchases fall under Wis. Stat. 196.491(3m)(c)(3), which prohibits firm sales by utility affiliate wholesale merchant plants to their affiliated utilities for a period of more than three years. These provisions were enacted in 1997. The small peaking unit was installed in 2003 primarily for the purpose of reducing tax expense. The status of the Castle Rock and Petenwell projects under the 1997 is unclear; the language of the statute suggests that it was to apply to new generating units constructed after enactment (WRPC has obtained PSC approval to own the peaking unit). WRPC has been selling the output of its hydroelectric units to its owner utilities since the 1940's.

Solution: Allow WRPC to sell power to its utility affiliates by contracts that may be longer than 3 years.

SECTION # 196.491 (3m) (c) 3. (intro.) is amended to read:

196.491 (3m) (c) 3. (intro.) ~~Am~~ Except as provided in par. (e) 2., an affiliated interest may not make any firm sale to a public utility with which the affiliated interest is affiliated if the firm sale satisfies any of the following:

SECTION # 196.491 (3m) (e) of the statutes is renumbered 196.491 (3m) (e) 1. and 196.491 (3m) (e) (title) is amended to read:

196.491 (3m) (e) (title) ~~Exemption~~: Exemptions.

SECTION # 196.491 (3m) (e) 2. of the statutes is created to read:

196.491 (3m) (e) 2. Paragraph (c) 3. does not apply to a firm sale from an affiliated interest hydroelectric wholesale merchant plant located in Adams or Juneau Counties to an affiliated interest public utility if the affiliated interest public utility owned, operated or controlled the hydroelectric wholesale merchant plant before January 1, 2012.

(End item 8)

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PSC PROPOSED LEGISLATIVE CHANGES

FALL 2011

Item #9

1. Place same political involvement restrictions on PSCW Commissioners as currently in effect for the Commissioner of Insurance
2. Prohibit the PSCW from ordering utilities to lobby on a legislative issue or take a specific position on a legislative issue

1. Place same political involvement restrictions on PSCW Commissioners as currently in effect for the Commissioner of Insurance.

This is the current language that applies to the Commissioner of Insurance:

15.73 Office of commissioner of insurance; creation. There is created an office of the commissioner of insurance under the direction and supervision of the commissioner of insurance. The commissioner shall not:

- (1) Be a candidate for public office in any election;
- (2) Directly or indirectly solicit or receive, or be in any manner concerned with soliciting or receiving any assessment, subscription, contribution or service, whether voluntary or involuntary, for any political purpose whatever, from any person within or without the state; nor
- (3) Act as an officer or manager for any candidate, political party or committee organized to promote the candidacy of any person for any public office.

This is the current language that applies to a PSC Commissioner:

15.79 Public service commission; creation. There is created a public service commission. No member of the commission may have a financial interest in a railroad, water carrier, or public utility. If any member voluntarily becomes so interested, the member's office shall become vacant. If the member involuntarily becomes so interested, the member's office shall become vacant unless the member divests himself or herself of the interest within a reasonable time. No commissioner may serve on or under any committee of a political party. Each commissioner shall hold office until a successor is appointed and qualified.

This draft makes the three political prohibitions that are applicable to the Commissioner of Insurance applicable to each Commissioner of the PSC and relocates an existing similar provision in current Wis. Stat. § 15.79 to the proposed new subsection of the statute. It also adds a new prohibition on contributions.

SECTION # 15.79 of the statutes is renumbered 15.79 (1) and amended to read:

15.79 Public service commission; creation. (1) There is created a public service commission.

No member of the commission may have a financial interest in a railroad, water carrier, or public utility. If any member voluntarily becomes so interested, the member's office shall become vacant. If the member involuntarily becomes so interested, the member's office shall become vacant unless the member divests himself or herself of the interest within a reasonable time. ~~No commissioner may serve on or under any committee of a political party.~~ Each commissioner shall hold office until a successor is appointed and qualified.

SECTION # 15.79 (2) of the statutes is created to read:

15.79 (2) A commissioner of the public service commission may not do any of the following:

- (a) Be a candidate for public office in any election.
- (b) Directly or indirectly solicit or receive, or be in any manner concerned with soliciting or receiving any assessment, subscription, contribution or service, whether voluntary or involuntary, for any political purpose whatever, from any person within or outside of the state.
- (c) Act as an officer or manager for any candidate, political party or committee organized to promote the candidacy of any person for any public office.
- (d) Serve on or under any committee of a political party.
- (e) Make a contribution, as defined in s. 11.01 (6), to any candidate, political party, political action committee or legislative campaign committee.

(End of item # 9-1.)

2. Prohibit the PSCW from ordering a utility to lobby on a legislative issue or take a specific position on a legislative issue.

SECTION # 196.395 of the statutes renumbered 196.395 (1).

SECTION # 196.395 (2) is created to read:

196.395 (2) The commission may not require a public utility to lobby on a legislative issue or to take a specific position on a legislative issue as a condition of any order.

(End of item # 9-2)

O:\2011-2012 Legislative Drafting\Fall 2011 Proposals\Item 9 ethics reform.docx

Kunkel, Mark

From: Ludwig, David - PSC [David.Ludwig@wisconsin.gov]

Sent: Thursday, October 27, 2011 3:43 PM

To: Lorence, John - PSC; Kunkel, Mark

Subject: RE: PSC Fall 2011 drafting request - Items 6 and 7

And on your question about referring to a method "that the commission or agency determines is likely to reach all parties" —

1. It's a good idea. Let's go with it.
2. Don't say "commission or agency" in ch. 227, because the definition of "agency" in s. 227.01(1) includes "commission." So in s. 196.40 use "commission" and in ss. 227.44(1) and 227.48(1) use "agency".

From: Lorence, John - PSC

Sent: Thursday, October 27, 2011 2:44 PM

To: Ludwig, David - PSC

Subject: FW: PSC Fall 2011 drafting request - Items 6 and 7

David, I think you did that draft – can you answer Mark's questions?

I've attached a copy of what I sent Mark to this e-mail. Thanks.

From: Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]

Sent: Thursday, October 27, 2011 2:37 PM

To: Lorence, John - PSC

Subject: RE: PSC Fall 2011 drafting request - Items 6 and 7

Sorry, one more question, item 6. Instead of referring to a method likely to reach all parties, can I refer to a method *that the commission or agency determines* is likely to reach all parties? Or does my language cause more problems than it solves?

From: Kunkel, Mark

Sent: Thursday, October 27, 2011 2:32 PM

To: Lorence, John - PSC

Subject: RE: PSC Fall 2011 drafting request - Items 6 and 7

One quick question: for item 6, in amending s. 227.44 (1), you end up referring to interested parties, instead of "known" interested parties. Is the deletion of "known" intentional?

From: Lorence, John - PSC [mailto:John.Lorence@wisconsin.gov]

Sent: Thursday, October 27, 2011 10:31 AM

To: Kunkel, Mark

Subject: PSC Fall 2011 drafting request - Items 6 and 7

Attached to this e-mail are the drafting instructions for the following items on the PSC Fall 2011 compiled list:

- Item 6, notice to parties
- Item 7, effective date of PSC decisions

Items 6 and 7 will need to be reconciled in the compiled draft.

10/27/2011

Kunkel, Mark

From: Ludwig, David - PSC [David.Ludwig@wisconsin.gov]
Sent: Thursday, October 27, 2011 3:35 PM
To: Kunkel, Mark
Cc: Lorence, John - PSC
Subject: RE: PSC Fall 2011 drafting request - Items 6 and 7

Mark,

Regarding your first question (which applies to both s. 196.40 and 227.48(1)), the answer is that the PSC already uses its website and e-mails to notify the attorneys of parties to its proceedings. We post ALJ orders and such like stuff on our Electronic Regulatory Filing system and we send e-mails to all the parties. So although it may seem strange to say that the agency is posting something on its website "to the party's attorney," that is the outcome. Because we have so many full parties and interested persons in our proceedings, we aren't often in a situation where such a posting only applies to one lawyer, but it could happen.

Regarding your second question about s. 227.48(1), you raise a good point about the possibility that more than one agency could be involved. Instead of saying "posting on the agency's website" in s. 227.48(1), we could say "posting on the website of the agency that conducted the proceeding".

Regarding your third question about whether we should keep the word "known" in s. 227.44(1), I believe striking out the word "known" was inadvertent, and keeping the word in the statute is a good idea.

From: Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]
Sent: Thursday, October 27, 2011 3:01 PM
To: Ludwig, David - PSC
Cc: Lorence, John - PSC
Subject: RE: PSC Fall 2011 drafting request - Items 6 and 7

David:

As amended, s. 227.48 (1) would allow serving a decision by posting on the agency's website ... to the party's attorney of record. Is it okay to say that something is posted on a website to a particular person?

Also, is it necessary to clarify that the "agency" is the agency that is doing the proceeding that is the contested case? Under s. 227.46 (1), an agency could borrow another agency's employee to act as hearing examiner. So could there be confusion over which agency's website should be used?

Sorry for all the questions. I don't normally work with ch. 227.

-- Mark

From: Kunkel, Mark
Sent: Thursday, October 27, 2011 2:46 PM
To: Lorence, John - PSC
Subject: RE: PSC Fall 2011 drafting request - Items 6 and 7

ok

From: Lorence, John - PSC [mailto:John.Lorence@wisconsin.gov]

10/27/2011

Sent: Thursday, October 27, 2011 2:45 PM
To: Kunkel, Mark
Subject: RE: PSC Fall 2011 drafting request - Items 6 and 7

Mark, Dave Ludwig actually did that draft, not me. So I sent him your questions and asked him to respond.

From: Kunkel, Mark [<mailto:Mark.Kunkel@legis.wisconsin.gov>]
Sent: Thursday, October 27, 2011 2:32 PM
To: Lorence, John - PSC
Subject: RE: PSC Fall 2011 drafting request - Items 6 and 7

One quick question: for item 6, in amending s. 227.44 (1), you end up referring to interested parties, instead of "known" interested parties. Is the deletion of "known" intentional?

From: Lorence, John - PSC [<mailto:John.Lorence@wisconsin.gov>]
Sent: Thursday, October 27, 2011 10:31 AM
To: Kunkel, Mark
Subject: PSC Fall 2011 drafting request - Items 6 and 7

Attached to this e-mail are the drafting instructions for the following items on the PSC Fall 2011 compiled list:

- Item 6, notice to parties
- Item 7, effective date of PSC decisions

Items 6 and 7 will need to be reconciled in the compiled draft.

Kunkel, Mark

From: Lorence, John - PSC [John.Lorence@wisconsin.gov]

Sent: Friday, October 28, 2011 9:28 AM

To: Kunkel, Mark

Subject: RE: Item 8 question

Valid concern. Maybe the suggested language below is more clear than my original language. Let me know if you have any questions.

196.491 (3m) (e) 2. Paragraph (c) 3. does not apply to a firm sale from a hydroelectric wholesale merchant plant located in Adams or Juneau Counties to a public utility that is an affiliated interest of the hydroelectric wholesale merchant plant if the public utility owned, operated or controlled the hydroelectric wholesale merchant plant before January 1, 2012.

From: Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]

Sent: Thursday, October 27, 2011 4:54 PM

To: Lorence, John - PSC

Subject: Item 8 question

In creating s. 196.491 (3m) (e) 2., you refer to an affiliated interest public utility. I'm not sure what that means. Here's my rewrite of your language. Let me know if it is okay or not:

196.491 (3m) (e) 2. Paragraph (c) 3. does not apply to a firm sale to a public utility from a hydroelectric wholesale merchant plant located in Adams or Juneau county of an affiliated interest of the public utility if the public utility owned, operated, or controlled the hydroelectric wholesale merchant plant before January 1, 2012.

10/28/2011

Kunkel, Mark

From: Lorence, John - PSC [John.Lorence@wisconsin.gov]
Sent: Friday, October 28, 2011 9:39 AM
To: Kunkel, Mark
Subject: RE: PSC Fall 2011 drafting request - Items 8 and 9

Yes, good catch. Maybe putting that phrase at the beginning would be more clear.

196.395 (2) As a condition of any order, the commission may not require a public utility to lobby on a legislative issue or to take a specific position on a legislative issue. ✓

From: Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]
Sent: Thursday, October 27, 2011 5:08 PM
To: Lorence, John - PSC
Subject: RE: PSC Fall 2011 drafting request - Items 8 and 9

In s. 196.395 (2), which you create, does "as a condition of any order" apply to both the prohibition on requiring that a public utility lobby on a legislative issue and the prohibition on requiring that a public utility take a specific position on a legis. issue? In other words, in both cases, you are prohibiting conditions in orders that would do those things?

From: Lorence, John - PSC [mailto:John.Lorence@wisconsin.gov]
Sent: Thursday, October 27, 2011 10:47 AM
To: Kunkel, Mark
Subject: PSC Fall 2011 drafting request - Items 8 and 9

Attached to this e-mail are the drafting instructions for the following items on the PSC Fall 2011 compiled list:

- Item 8, small hydro affiliated interest exemption
- Item 9, ethics reform

I will send you drafts for Item 2, certificates of authority cost thresholds, and Item 4, Renewable Resource Credit update, as soon as I can.

Kunkel, Mark

From: Lorence, John - PSC [John.Lorence@wisconsin.gov]
Sent: Friday, October 28, 2011 9:44 AM
To: Kunkel, Mark
Subject: RE: PSC Fall 2011 drafting request - Items 8 and 9

I will have to find out, but I might not get an answer until Monday. However, I assume we want the prohibitions to apply immediately, so please proceed that way unless you hear differently from me.

From: Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]
Sent: Thursday, October 27, 2011 5:17 PM
To: Lorence, John - PSC
Subject: RE: PSC Fall 2011 drafting request - Items 8 and 9

Regarding the s. 15.79 (2) restrictions, when should those first apply? Right away to sitting commissioners, or to commissioners appointed after the bill's effective date?

From: Lorence, John - PSC [mailto:John.Lorence@wisconsin.gov]
Sent: Thursday, October 27, 2011 10:47 AM
To: Kunkel, Mark
Subject: PSC Fall 2011 drafting request - Items 8 and 9

Attached to this e-mail are the drafting instructions for the following items on the PSC Fall 2011 compiled list:

- Item 8, small hydro affiliated interest exemption
- Item 9, ethics reform

I will send you drafts for Item 2, certificates of authority cost thresholds, and Item 4, Renewable Resource Credit update, as soon as I can.

Kunkel, Mark

From: Lorence, John - PSC [John.Lorence@wisconsin.gov]
Sent: Friday, October 28, 2011 10:09 AM
To: Kunkel, Mark
Subject: FW: Item 9 ethic reform draft - question

This is the definitive answer.

From: Pirlot, RJ - PSC
Sent: Friday, October 28, 2011 10:01 AM
To: Ruesch, Kristin - PSC; Lorence, John - PSC
Cc: Smith, Cynthia - PSC; Ludwig, David - PSC
Subject: RE: Item 9 ethic reform draft - question

Agreed, apply to current commissioners.

From: Ruesch, Kristin - PSC
Sent: Friday, October 28, 2011 9:55 AM
To: Lorence, John - PSC; Pirlot, RJ - PSC
Cc: Smith, Cynthia - PSC; Ludwig, David - PSC
Subject: RE: Item 9 ethic reform draft - question

I think it should apply immediately if possible.

From: Lorence, John - PSC
Sent: Friday, October 28, 2011 9:50 AM
To: Pirlot, RJ - PSC
Cc: Smith, Cynthia - PSC; Ruesch, Kristin - PSC; Ludwig, David - PSC
Subject: Item 9 ethic reform draft - question

I received an initial applicability question from the LRB drafter on the ethics reform draft, Item 9.

Should the political restrictions created in this bill draft apply immediately to current commissioners or should it first apply to newly-appointed commissioners?

Thanks.

10/28/2011

Kunkel, Mark

From: Lorence, John - PSC [John.Lorence@wisconsin.gov]**Sent:** Friday, October 28, 2011 2:14 PM**To:** Kunkel, Mark**Subject:** RE: Item 8 question

Any entity that is in an ownership relationship (as described in s. 196.52) with a public utility is an affiliate. So a public utility can be an affiliate of another public utility. Examples: Wisconsin Gas and Wisconsin Electric, any of the 5 major IOU electric utilities and ATC, a public utility. While I read affiliated interests as a two-way street - if a merchant plant is an affiliate of a utility, the utility is an affiliate of the merchant plant as well - it can be written your way for better clarity. How's this?

~~196.491 (3m) (e) 2. Paragraph (c) 3. does not apply to a firm sale from a hydroelectric wholesale merchant plant located in Adams or Juneau Counties to a public utility if the hydroelectric wholesale merchant plant is an affiliated interest of the public utility and the public utility owned, operated or controlled the hydroelectric wholesale merchant plant before January 1, 2012.~~ ✓

From: Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]**Sent:** Friday, October 28, 2011 12:44 PM**To:** Lorence, John - PSC**Subject:** RE: Item 8 question

John, I could be wrong, but to my mind, an "affiliated interest" is somebody other than a public utility that has a specified affiliation with a public utility. So it seems odd to me to refer below to "a public utility that is an affiliated interest of the hydroelectric wholesale merchant plant." But like I said, I could be wrong.

From: Lorence, John - PSC [mailto:John.Lorence@wisconsin.gov]**Sent:** Friday, October 28, 2011 9:28 AM**To:** Kunkel, Mark**Subject:** RE: Item 8 question

Valid concern. Maybe the suggested language below is more clear than my original language. Let me know if you have any questions.

~~196.491 (3m) (e) 2. Paragraph (c) 3. does not apply to a firm sale from a hydroelectric wholesale merchant plant located in Adams or Juneau Counties to a public utility that is an affiliated interest of the hydroelectric wholesale merchant plant if the public utility owned, operated or controlled the hydroelectric wholesale merchant plant before January 1, 2012.~~

From: Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]**Sent:** Thursday, October 27, 2011 4:54 PM**To:** Lorence, John - PSC

Subject: Item 8 question

In creating s. 196.491 (3m) (e) 2., you refer to an affiliated interest public utility. I'm not sure what that means. Here's my rewrite of your language. Let me know if it is okay or not:

196.491 (3m) (e) 2. Paragraph (c) 3. does not apply to a firm sale to a public utility from a hydroelectric wholesale merchant plant located in Adams or Juneau county of an affiliated interest of the public utility if the public utility owned, operated, or controlled the hydroelectric wholesale merchant plant before January 1, 2012.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3359/P1

MDK:...

ef

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today, if possible,
if not possible,
please let me know.
-MDK



1 AN ACT ...; relating to: commissioners of the public service commission (PSC);
2 orders and determinations of the (PSC), certificates of authority issued by the
3 (PSC), approval of contracts by the (PSC); electricity sales from certain
4 hydroelectric plants; public utility removal of certain electric service lines; and
5 service of notice for hearings and decisions in contested cases. of state agencies

Analysis by the Legislative Reference Bureau

X Under current law, a "contested case" is an agency proceeding in which the assertion of a party of a substantial interest is denied or challenged by another party and, after a hearing, a substantial interest of a party is determined or adversely affected by an agency decision or order. Current law requires all parties to a contested case to be afforded an opportunity for a hearing after reasonable notice. Current law provides that, except in an emergency, reasonable notice consists of mailing notice to known interested parties at least 10 days prior to the hearing. This bill provides that, as an alternative to mail, reasonable notice may consist of notification by personal delivery, electronic mail, posting on the Web site of the agency conducting the hearing, or any other method that such agency determines is likely to reach the parties. As under current law, the notice must be provided to known interested parties at least 10 days prior to the hearing. The bill also provides that service of decisions on parties and attorneys in contested cases may be made by personal delivery, mail, electronic mail, posting on an agency's Web site, or any other method an agency determines is likely to reach the parties or attorneys. Under current law, such service is limited to personal delivery or mail. X

X Under current law, unless the Public Service Commission (PSC) specifies a different effective date, the PSC's orders and determinations take effect 20 days after the PSC files and serves an order or determination on the parties to the proceeding in which the PSC made the order or determination or on the parties' attorneys. This bill provides that an order or determination takes effect on the day after the order or determination is filed and served, unless the PSC specifies a different effective date. Current law also specifies that service must be done by personal delivery or mail. This bill allows service to be done by personal delivery, mail, electronic mail, posting on the PSC's Web site, or any other method that the PSC determines is likely to reach the parties or attorneys. ly

three Current law generally prohibits an affiliated interest from making a firm sale of electricity of 3 years or more to a public utility with which the affiliated interest is affiliated. Under current law, an affiliated interest is considered to be affiliated with a public utility if the affiliated interest has specified ownership or control interests in common with the public utility. Current law defines "firm sale" as a sale in which electricity is intended to be available to a purchaser at all times during a specified period on an uninterruptible basis. This bill creates an exception to the prohibition for a firm sale from an affiliated interest's hydroelectric plant located in Adams or Juneau county to an affiliated public utility, but only if the affiliated public utility owned, operated, or controlled the hydroelectric plant before January 1, 2012.

Current law generally requires the PSC to approve contracts or arrangements between public utilities and their affiliated interests. An exception to the requirement applies if the amount of consideration involved in the contract or arrangement does not exceed \$25,000 or 5% of the equity of the public utility, whichever is smaller. This bill revises the exception so that PSC approval is not required if the amount of consideration does not exceed \$250,000 or 5% of the equity, whichever is smaller. In addition, beginning in 2014 and biennially thereafter, the bill requires the PSC to adjust the \$250,000 amount based on inflation. Also, if PSC approval is required, the bill requires the PSC to take final action on an application for approval within deadlines that depend on whether the PSC holds a hearing on the application. If no hearing is held, the PSC must take final action within 90 days after issuing a notice opening a docket on the application. If a hearing is held, the PSC must take final action within 180 days after issuing a notice of the hearing, except that, for good cause, the chairperson of the PSC may extend that deadline by an additional 180 days. If the PSC fails to take action within the foregoing deadlines, the bill provides that the PSC is considered to have approved the application. percent

Current law generally requires a public utility to obtain a certificate of authority from the PSC before the public utility may engage in certain construction, installation, or improvement projects. This bill requires the PSC to take final action on an application for such a certificate within deadlines that depend on whether the PSC holds a hearing on the application. If no hearing is held, the PSC must take final action within 90 days after issuing a notice opening a docket on the application, except that, for good cause, the chairperson of the PSC may extend the deadline by an additional 90 days. If a hearing is held, the PSC must take final action within 180 days after issuing a notice of the hearing, except that, for good cause, the chairperson

of the PSC may extend the deadline by an additional 180 days. If the PSC fails to take action within the foregoing deadlines, the bill provides that the PSC is considered to have approved the application.

Current law generally prohibits a public utility from abandoning or discontinuing any line or extension of service without the prior approval of the PSC. The prohibition does not apply to a public utility that provides telecommunications service. This bill creates another exception for a public utility's removal, at the request of a customer, of the customer's electric service drop or lateral, including any primary voltage line that is used exclusively to serve the customer.

X Current law prohibits a commissioner of the PSC from serving on or under any committee of a political party. The bill also prohibits a commissioner from doing any of the following: 1) being a candidate for public office in any election; 2) directly or indirectly soliciting or receiving any assessment, subscription, contribution, or service for any political purpose from any person within or outside of the state; 3) acting as an officer or manager for any candidate, political party, or committee organized to promote the candidacy of any person for any public office; or 4) making a contribution to any candidate, political party, political action committee, or legislative campaign committee. X

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

X
1 **SECTION 1.** 15.79 of the statutes is renumbered 15.79 (1) and amended to read:

2 15.79 (1) There is created a public service commission. No member of the
3 commission may have a financial interest in a railroad, water carrier, or public
4 utility. If any member voluntarily becomes so interested, the member's office shall
5 become vacant. If the member involuntarily becomes so interested, the member's
6 office shall become vacant unless the member divests himself or herself of the
7 interest within a reasonable time. No commissioner may serve on or under any
8 committee of a political party. Each commissioner shall hold office until a successor
9 is appointed and qualified.

History: 1979 c. 171; 2005 a. 179.

✓
10 **SECTION 2.** 15.79 (2) of the statutes is created to read:

1 15.79 (2) A commissioner of the public service commission may not do any of
2 the following:

3 (a) Be a candidate for public office in any election.

4 (b) Directly or indirectly solicit or receive, or be in any manner concerned with
5 soliciting or receiving any assessment, subscription, contribution, or service,
6 whether voluntary or involuntary, for any political purpose whatever, from any
7 person within or outside of the state.

8 (c) Act as an officer or manager for any candidate, political party, or committee
9 organized to promote the candidacy of any person for any public office.

10 (d) Serve on or under any committee of a political party.

11 (e) Make a contribution, as defined in s. 11.01 (6), to any candidate, political
12 party, political action committee, or legislative campaign committee.

13 SECTION 3. 196.395 (title) of the statutes is amended to read:

14 **196.395 (title) Test, conditional, emergency and supplemental orders;**
15 **~~waiver of conditions in orders~~ order conditions.**

History: 1983 a. 53.

16 SECTION 4. 196.395 of the statutes is renumbered 196.395 (1).

17 SECTION 5. 196.395 (2) of the statutes is created to read:

18 196.395 (2) As a condition of any order, the commission may not require a
19 public utility to lobby on a legislative issue or to take a specific position on a
20 legislative issue.

21 SECTION 6. 196.40 of the statutes is amended to read:

22 **196.40 Orders and determinations; time of taking effect.** Every order or
23 determination of the commission shall take effect ~~20 days~~ the day after the order or
24 determination has been filed and served by personal delivery or, mail, electronic

1 mail, posting on the commission's Web site, or any other method that the commission
2 determines is likely to reach the parties or their attorneys, to all parties to the
3 proceeding in which the order or determination was made or to their attorneys,
4 unless the commission specifies a different date upon which the order or
5 determination shall be effective. After the effective date every order or
6 determination shall be on its face lawful and reasonable unless a court determines
7 otherwise under s. 227.57.

History: 1983 a. 53; 1985 a. 182 s. 57.

8 **SECTION 7.** 196.49 (5r) of the statutes is created to read:

9 **196.49 (5r)** (a) If a hearing is held on an application filed under sub. (1), (2),
10 (3), or (5), the commission shall take final action on the application within 180 days
11 after the commission issues a notice of hearing on the application. The chairperson
12 of the commission may extend the time period for an additional 180 days for good
13 cause. If the commission fails to take final action within the initial 180-day period,
14 or the extended 180-day time period, the commission is considered to have issued
15 a certificate of authority with respect to the application.

16 (b) If a hearing is not held on an application filed under sub. (1), (2), (3), or (5),
17 the commission shall take final action on the application within 90 days after the
18 commission issues a notice opening a docket on the application. The chairperson of
19 the commission may extend the time period for an additional 90 days for good cause.
20 If the commission fails to take final action within the initial 90-day period, or the
21 extended 90-day time period, the commission is considered to have issued a
22 certificate of authority with respect to the application.

23 **SECTION 8.** 196.795 (6m) (c) of the statutes is amended to read:

LPS:
sort
out of
order



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3359/P1
MDK:kjf:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to renumber* 196.395 and 196.491 (3m) (e); *to renumber and amend*
2 15.79 and 196.81 (3); *to amend* 196.395 (title), 196.40, 196.491 (3m) (a) (intro.),
3 196.491 (3m) (c) 3. (intro.), 196.50 (2) (i), 196.52 (3) (b) 1., 196.795 (6m) (c),
4 227.44 (1), 227.48 (1) and 230.08 (2) (mL); *to repeal and recreate* 196.491 (3m)
5 (e) (title); and *to create* 15.79 (2), 196.395 (2), 196.49 (5r), 196.491 (3m) (e) 2.,
6 196.52 (3) (b) 1m., 196.52 (3) (d) and 196.81 (3) (b) of the statutes; **relating to:**
7 commissioners of the Public Service Commission; orders and determinations of
8 the commission, certificates of authority issued by the commission, approval of
9 contracts by the commission; electricity sales from certain hydroelectric plants;
10 public utility removal of certain electric service lines; and service of notice for
11 hearings and decisions in contested cases of state agencies.

Analysis by the Legislative Reference Bureau

Under current law, a “contested case” is an agency proceeding in which the assertion of a party of a substantial interest is denied or challenged by another party and, after a hearing, a substantial interest of a party is determined or adversely affected by an agency decision or order. Current law requires all parties to a

contested case to be afforded an opportunity for a hearing after reasonable notice. Current law provides that, except in an emergency, reasonable notice consists of mailing notice to known interested parties at least ten days prior to the hearing. This bill provides that, as an alternative to mail, reasonable notice may consist of notification by personal delivery, electronic mail, posting on the Web site of the agency conducting the hearing, or any other method that such agency determines is likely to reach the parties. As under current law, the notice must be provided to known interested parties at least ten days prior to the hearing. The bill also provides that service of decisions on parties and attorneys in contested cases may be made by personal delivery, mail, electronic mail, posting on an agency's Web site, or any other method an agency determines is likely to reach the parties or attorneys. Under current law, such service is limited to personal delivery or mail.

Under current law, unless the Public Service Commission (PSC) specifies a different effective date, the PSC's orders and determinations take effect 20 days after the PSC files and serves an order or determination on the parties to the proceeding in which the PSC made the order or determination or on the parties' attorneys. This bill provides that an order or determination takes effect on the day after the order or determination is filed and served, unless the PSC specifies a different effective date. Current law also specifies that service must be done by personal delivery or mail. This bill allows service to be done by personal delivery, mail, electronic mail, posting on the PSC's Web site, or any other method that the PSC determines is likely to reach the parties or attorneys.

Current law generally prohibits an affiliated interest from making a firm sale of electricity of three years or more to a public utility with which the affiliated interest is affiliated. Under current law, an affiliated interest is considered to be affiliated with a public utility if the affiliated interest has specified ownership or control interests in common with the public utility. Current law defines "firm sale" as a sale in which electricity is intended to be available to a purchaser at all times during a specified period on an uninterruptible basis. This bill creates an exception to the prohibition for a firm sale from an affiliated interest's hydroelectric plant located in Adams or Juneau county to an affiliated public utility, but only if the affiliated public utility owned, operated, or controlled the hydroelectric plant before January 1, 2012.

Current law generally requires the PSC to approve contracts or arrangements between public utilities and their affiliated interests. An exception to the requirement applies if the amount of consideration involved in the contract or arrangement does not exceed \$25,000 or 5 percent of the equity of the public utility, whichever is smaller. This bill revises the exception so that PSC approval is not required if the amount of consideration does not exceed \$250,000 or 5 percent of the equity, whichever is smaller. In addition, beginning in 2014 and biennially thereafter, the bill requires the PSC to adjust the \$250,000 amount based on inflation. Also, if PSC approval is required, the bill requires the PSC to take final action on an application for approval within deadlines that depend on whether the PSC holds a hearing on the application. If no hearing is held, the PSC must take final action within 90 days after issuing a notice opening a docket on the application. If

a hearing is held, the PSC must take final action within 180 days after issuing a notice of the hearing, except that, for good cause, the chairperson of the PSC may extend that deadline by an additional 180 days. If the PSC fails to take action within the foregoing deadlines, the bill provides that the PSC is considered to have approved the application.

Current law generally requires a public utility to obtain a certificate of authority from the PSC before the public utility may engage in certain construction, installation, or improvement projects. This bill requires the PSC to take final action on an application for such a certificate within deadlines that depend on whether the PSC holds a hearing on the application. If no hearing is held, the PSC must take final action within 90 days after issuing a notice opening a docket on the application, except that, for good cause, the chairperson of the PSC may extend the deadline by an additional 90 days. If a hearing is held, the PSC must take final action within 180 days after issuing a notice of the hearing, except that, for good cause, the chairperson of the PSC may extend the deadline by an additional 180 days. If the PSC fails to take action within the foregoing deadlines, the bill provides that the PSC is considered to have approved the application.

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Current law prohibits a commissioner of the PSC from serving on or under any committee of a political party. The bill also prohibits a commissioner from doing any of the following: 1) being a candidate for public office in any election; 2) directly or indirectly soliciting or receiving any assessment, subscription, contribution, or service for any political purpose from any person within or outside of the state; 3) acting as an officer or manager for any candidate, political party, or committee organized to promote the candidacy of any person for any public office; or 4) making a contribution to any candidate, political party, political action committee or legislative campaign committee.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 15.79 of the statutes is renumbered 15.79 (1) and amended to read:
- 2 15.79 (1) There is created a public service commission. No member of the
- 3 commission may have a financial interest in a railroad, water carrier, or public
- 4 utility. If any member voluntarily becomes so interested, the member's office shall

1 become vacant. If the member involuntarily becomes so interested, the member's
2 office shall become vacant unless the member divests himself or herself of the
3 interest within a reasonable time. ~~No commissioner may serve on or under any~~
4 ~~committee of a political party.~~ Each commissioner shall hold office until a successor
5 is appointed and qualified.

6 **SECTION 2.** 15.79 (2) of the statutes is created to read:

7 15.79 (2) A commissioner of the public service commission may not do any of
8 the following:

9 (a) Be a candidate for public office in any election.

10 (b) Directly or indirectly solicit or receive, or be in any manner concerned with
11 soliciting or receiving any assessment, subscription, contribution, or service,
12 whether voluntary or involuntary, for any political purpose whatever, from any
13 person within or outside of the state.

14 (c) Act as an officer or manager for any candidate, political party, or committee
15 organized to promote the candidacy of any person for any public office.

16 (d) Serve on or under any committee of a political party.

17 (e) Make a contribution, as defined in s. 11.01 (6), to any candidate, political
18 party, political action committee, or legislative campaign committee.

19 **SECTION 3.** 196.395 (title) of the statutes is amended to read:

20 **196.395 (title) Test, conditional, emergency and supplemental orders;**
21 **~~waiver of conditions in orders~~ order conditions.**

22 **SECTION 4.** 196.395 of the statutes is renumbered 196.395 (1).

23 **SECTION 5.** 196.395 (2) of the statutes is created to read:

1 196.395 (2) As a condition of any order, the commission may not require a
2 public utility to lobby on a legislative issue or to take a specific position on a
3 legislative issue.

4 **SECTION 6.** 196.40 of the statutes is amended to read:

5 **196.40 Orders and determinations; time of taking effect.** Every order or
6 determination of the commission shall take effect ~~20 days~~ the day after the order or
7 determination has been filed and served by personal delivery ~~or, mail, electronic~~
8 mail, posting on the commission's Web site, or any other method that the commission
9 determines is likely to reach the parties or their attorneys, to all parties to the
10 proceeding in which the order or determination was made or to their attorneys,
11 unless the commission specifies a different date upon which the order or
12 determination shall be effective. After the effective date every order or
13 determination shall be on its face lawful and reasonable unless a court determines
14 otherwise under s. 227.57.

15 **SECTION 7.** 196.49 (5r) of the statutes is created to read:

16 196.49 (5r) (a) If a hearing is held on an application filed under sub. (1), (2),
17 (3), or (5), the commission shall take final action on the application within 180 days
18 after the commission issues a notice of hearing on the application. The chairperson
19 of the commission may extend the time period for an additional 180 days for good
20 cause. If the commission fails to take final action within the initial 180-day period,
21 or the extended 180-day time period, the commission is considered to have issued
22 a certificate of authority with respect to the application.

23 (b) If a hearing is not held on an application filed under sub. (1), (2), (3), or (5),
24 the commission shall take final action on the application within 90 days after the
25 commission issues a notice opening a docket on the application. The chairperson of

1 196.795 (6m) (c) *Wholesale merchant plants.* The assets of a wholesale
2 merchant plant shall not be included in the sum of the assets of a public utility
3 affiliate under par. (b) 1. a., b. or c. and shall not be included in a nonutility affiliate's
4 total assets under par. (b) 2. a. if the requirements specified in s. 196.491 (3m) (a) 1.
5 and 2. are satisfied or if the wholesale merchant plant qualifies for the exemption
6 under s. 196.491 (3m) (e) 1.

History: 1985 a. 79; 1985 a. 297 ss. 67, 68, 76; 1985 a. 332; 1987 a. 186; 1987 a. 403 s. 256; 1989 a. 303; 1991 a. 269; 1993 a. 213; 1997 a. 140, 204; 1999 a. 9, 150; 2001 a. 16.

7 **SECTION 9.** 196.491 (3m) (a) (intro.) of the statutes is amended to read:

8 196.491 (3m) (a) *Commission approval required.* (intro.) Except as provided
9 in par. (e) 1, an affiliated interest of a public utility may not own, control or operate
10 a wholesale merchant plant without the approval of the commission. The
11 commission shall grant its approval only if each of the following is satisfied:

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33, 89; 2005 a. 24, 29; 2007 a. 20 s. 9121 (6) (a); 2009 a. 40, 378, 379; 2011 a. 32.

12 **SECTION 10.** 196.491 (3m) (c) 3. (intro.) of the statutes is amended to read:

13 196.491 (3m) (c) 3. (intro.) ~~An~~ Except as provided in par. (e) 2., an affiliated
14 interest may not make any firm sale to a public utility with which the affiliated
15 interest is affiliated if the firm sale satisfies any of the following:

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33, 89; 2005 a. 24, 29; 2007 a. 20 s. 9121 (6) (a); 2009 a. 40, 378, 379; 2011 a. 32.

16 **SECTION 11.** 196.491 (3m) (e) (title) of the statutes is repealed and recreated to

17 read:

18 196.491 (3m) (e) *Exemptions.*

19 **SECTION 12.** 196.491 (3m) (e) of the statutes is renumbered 196.491 (3m) (e) 1.

20 **SECTION 13.** 196.491 (3m) (e) 2. of the statutes is created to read:

21 196.491 (3m) (e) 2. Paragraph (c) 3. does not apply to a firm sale from a
22 hydroelectric wholesale merchant plant located in Adams or Juneau county to a
23 public utility ~~that is an affiliated interest of~~ the hydroelectric wholesale merchant

if

an
the
is an affiliated interest of the public utility and
1 plant ~~of~~ the public utility owned, operated, or controlled the hydroelectric wholesale
2 merchant plant before January 1, 2012.

*****NOTE: Is it okay to refer to a public utility that is an affiliated interest? Or
is an affiliated interest an entity other than a public utility that has a specified affiliation
with a public utility?*

3 **SECTION 14.** 196.50 (2) (i) of the statutes, as created by 2011 Wisconsin Act 22,
4 is amended to read:

5 196.50 (2) (i) A telecommunications utility certified under this subsection is
6 exempt from ss. 196.02 (2) and (6), 196.05, 196.06, 196.07, 196.08, 196.09, 196.10,
7 196.12, 196.13, 196.16, 196.18, 196.19, 196.20, 196.21, 196.219 (3) (c), (e), (g), and (L),
8 (4d), (4m), and (5), 196.24, 196.395 (1), 196.49, 196.52, 196.58, 196.60, 196.64,
9 196.78, and 196.79 and, except with respect to wholesale telecommunications
10 service, is exempt from s. 196.219 (4).

History: 1977 c. 418; 1983 a. 53; 1985 a. 297 ss. 52 to 54, 76; 1993 a. 496; 1995 a. 409; 1999 a. 150 s. 672; 2005 a. 441; 2007 a. 42; 2011 a. 22.

11 **SECTION 15.** 196.52 (3) (b) 1. of the statutes, as affected by 2011 Wisconsin Act
12 22, is amended to read:

13 196.52 (3) (b) 1. The requirement for written approval under par. (a) shall not
14 apply to any contract or arrangement if the amount of consideration involved is not
15 in excess of \$25,000 the threshold amount under subd. 1m. or 5% of the equity of the
16 public utility, whichever is smaller. The requirement under par. (a) also does not
17 apply to contracts or arrangements with joint local water authorities under s.
18 66.0823. Regularly recurring payments under a general or continuing arrangement
19 which aggregate a greater annual amount may not be broken down into a series of
20 transactions to come within the exemption under this paragraph. Any transaction
21 exempted under this paragraph shall be valid or effective without commission
22 approval under this section.

History: 1981 c. 390; 1983 a. 53, 538; 1985 a. 297; 1993 a. 496; 1995 a. 225; 1997 a. 184; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 162; 2001 a. 16; 2005 a. 253; 2011 a. 22.

1 **SECTION 16.** 196.52 (3) (b) 1m. of the statutes is created to read:

2 196.52 (3) (b) 1m. The threshold amount under subd. 1 is \$250,000, except that
3 in 2014 and biennially thereafter, the commission shall adjust such threshold
4 amount to reflect adjustments to the U.S. consumer price index for all urban
5 consumers, U.S. city average, as determined by the U.S. department of labor, and
6 disseminate the adjusted threshold on the commission's website.

7 **SECTION 17.** 196.52 (3) (d) of the statutes is created to read:

8 196.52 (3) (d) 1. If a hearing is held on an application under this subsection,
9 the commission shall take final action on the application within 180 days after the
10 commission issues a notice of hearing on the application. The chairperson of the
11 commission may extend the time period for an additional 180 days for good cause.
12 If the commission fails to take final action within the initial 180-day period, or the
13 extended 180-day time period, the commission is considered to have approved the
14 application.

15 2. If a hearing is not held on an application under this subsection, the
16 commission shall take final action on the application within 90 days after the
17 commission issues a notice opening a docket on the application. If the commission
18 fails to take final action within the initial 90-day period, the commission is
19 considered to have approved the application.

20 **SECTION 18.** 196.81 (3) of the statutes, as affected by 2011 Wisconsin Act 22,
21 is renumbered 196.81 (3) (intro.) and amended to read:

22 196.81 (3) (Intro.) This section does not apply to -a any of the following:

23 (a) A service discontinuance by a public utility that is a telecommunications
24 provider.

1 **SECTION 19.** 196.81 (3) (b) of the statutes is created to read:

2 196.81 (3) (b) A public utility's removal, at the request of a customer, of the
3 customer's electric service drop or electric service lateral, including any primary
4 voltage line that is used exclusively to serve the customer requesting the removal.

5 **SECTION 20.** 227.44 (1) of the statutes is amended to read:

6 227.44 (1) In a contested case, all parties shall be afforded an opportunity for
7 hearing after reasonable notice. Except in the case of an emergency, reasonable
8 notice shall consist of mailing notice notification by personal delivery, mail,
9 electronic mail, posting on the Web site of the agency that conducts the hearing, or
10 any other method that such agency determines is likely to reach the parties, to
11 known interested parties at least 10 days prior to the hearing.

History: 1975 c. 414; 1977 c. 26, 418; 1985 a. 182 ss. 32, 52, 55 (1); Stats. 1985 s. 227.44; 1993 a. 16; 1997 a. 237; 2003 a. 33, 118.

12 **SECTION 21.** 227.48 (1) of the statutes is amended to read:

13 227.48 (1) Every decision when made, signed and filed, shall be served
14 forthwith by personal delivery ~~or mailing of a copy, mail, electronic mail, posting on~~
15 the Web site of the agency that conducts the proceedings, or any other method that
16 such agency determines is likely to reach a party or attorney, to each party to the
17 proceedings or to the party's attorney of record.

History: 1975 c. 94 s. 3; 1975 c. 414 ss. 13, 17; Stats. 1975 s. 227.11; 1981 c. 378; 1985 a. 182 ss. 33rm, 57; Stats. 1985 s. 227.48.

18 **SECTION 22.** 230.08 (2) (mL) of the statutes is amended to read:

19 230.08 (2) (mL) One executive assistant of each commissioner of the public
20 service commission, created under s. 15.79 (1).

History: 1971 c. 40, 270; 1973 c. 333, 335; 1977 c. 29, 187; 1977 c. 196 ss. 34, 108, 130 (5); 1977 c. 272, 418, 449; Stats. 1977 s. 230.08; 1979 c. 34, 189, 221, 356, 361; 1981 c. 20, 347, 374; 1983 a. 27 ss. 1605o to 1609am, 2200 (15); 1983 a. 189 s. 329 (27); 1983 a. 371, 378; 1985 a. 29; 1987 a. 27, 119, 204, 354, 399, 403; 1989 a. 31, 107, 119, 122, 169, 208, 219, 336; 1991 a. 39, 250, 269; 1993 a. 16, 349, 399; 1995 a. 27 ss. 6245 to 6277m, 9126 (19), 9130 (4); 1995 a. 216; 1997 a. 3, 27, 179, 194, 237; 1999 a. 9, 42, 87, 186; 2001 a. 16, 19, 109; 2003 a. 33 ss. 2392 to 2407b, 9160; 2003 a. 91, 326; 2005 a. 22, 25; 2007 a. 1; 2007 a. 20 ss. 3006 to 3014, 9121 (6) (a); 2009 a. 28; 2011 a. 10, 32, 38; s. 13.92 (2) (i).

21 **SECTION 23. Initial applicability.**

22 (1) COMMISSIONERS OF THE PUBLIC SERVICE COMMISSION. The treatment of section
23 15.79 (2) of the statutes first applies to an individual^s holding office as

1 commissioners of the public service commission on the effective date of this
2 subsection.

3 (2) PROHIBITION ON ORDERS. The treatment of section 196.395 (2) of the statutes
4 first applies to orders issued on the effective date of this subsection.

5 (3) ORDERS AND DETERMINATIONS. The treatment of section 196.40 of the statutes
6 first applies to orders and determinations made on the effective date of this
7 subsection.

8 (4) CERTIFICATES OF AUTHORITY. The treatment of section 196.49 (5r) of the
9 statutes first applies to applications filed with the public service commission under
10 section 196.49 (1), (2), (3) or (5) of the statutes on the effective date of this subsection.

11 (5) AFFILIATED INTEREST TRANSACTIONS. The treatment of section 196.52 (3) (b)
12 1. and 1m. and (d) of the statutes first applies to applications filed with the public
13 service commission under section 196.52 (3) of the statutes on the effective date of
14 this subsection.

15 (6) SERVICE LINE REMOVALS. The treatment of section 196.81 (3) (b) of the
16 statutes first applies to removals that occur on the effective date of this subsection.

17 (7) CONTESTED CASES. The treatment of section 227.44 (1) of the statutes first
18 applies to contested cases commenced on the effective date of this subsection.

19 (8) AGENCY DECISIONS. The treatment of section 227.48 (1) of the statutes first
20 applies to decisions made on the effective date of this subsection.

21 (END)

Kunkel, Mark

From: Lorence, John - PSC [John.Lorence@wisconsin.gov]

Sent: Tuesday, November 01, 2011 3:29 PM

To: Kunkel, Mark

Subject: PSC Fall 2011 drafting request - Item 2

Attachments: Item 2 cost thresholds for CA applications.docx

Attached to this e-mail are the drafting instructions for the following item on the PSC Fall 2011 compiled list:

- Item 2, certificate of authority cost thresholds

Please incorporate this draft into the compiled draft. Let me know if you have any questions. Thanks

**PROPOSED LEGISLATIVE CHANGES
FALL 2011**

Item 2, Cost Thresholds for Certificates of Authority

This draft establishes cost thresholds for commission review of certificate of authority applications under Wis. Stat. § 196.49 (1), (2), (3) or (5). If a project has a proposed cost less than the threshold, the commission is not required to review or approve that project. The cost thresholds, which are set to be industry-specific for electric, natural gas and water public utilities, are also indexed for inflation.

SECTION # 196.49 (5g) of the statutes is created to read:

196.49 (5g) (a) A public utility is not required to receive commission approval under subs. (1), (2), (3) or (5) before constructing a proposed project if the cost of constructing the proposed project is less than the applicable cost threshold in this subsection.

(b) An electric public utility project requires commission review and approval under this section if the cost of the electric project exceeds any of the following:

1. If the applicant electric public utility's prior year electric operating revenues are less than \$5,000,000, an electric project whose estimated gross cost exceeds \$165,000.
2. If the applicant electric public utility's prior year electric operating revenues are between \$5,000,000 and \$250,000,000, an electric project whose estimated gross cost exceeds 2 percent of these revenues or exceeds the threshold under subd. 1, whichever is greater.

3. If the applicant electric public utility's prior year electric operating revenues are more than \$250,000,000, an electric project whose estimated gross cost exceeds \$8,250,000.

(c) A natural gas public utility project requires commission review and approval under this section if the gross cost of the gas project exceeds \$2,500,000 or 4 percent of the gas utility's prior year gas operating revenues, whichever is less.

(d) A water public utility project or combined water and sewer public utility project requires commission review and approval under this section if the gross cost of the project exceeds \$250,000 or 25 percent of the utility's prior year operating revenues, whichever is less.

(e) Beginning in calendar year 2014, and biennially thereafter, the commission shall adjust the estimated gross cost thresholds in pars. (b) to (d) to reflect adjustments to the cost of utility construction based on the applicable industry cost index numbers published in the Handy-Whitman Index of Public Utility Construction Costs, or an equivalent successor index, and disseminate the adjusted threshold on the commission's website.

SECTION # Initial Applicability. The treatment of 196.49 (5g) of the statutes first applies to a project subject to s.196.49 (1), (2), (3) or (5), Stats., proposed on the effective date of this section.

(End, Item 3)

Kunkel, Mark

From: Kunkel, Mark
Sent: Wednesday, November 02, 2011 8:53 AM
To: Lorence, John - PSC
Subject: RE: PSC Fall 2011 drafting request - Item 2

One more issue (sorry). Are the exemptions limited to construction, or do they also apply to extensions, improvements, additions, etc.?

From: Kunkel, Mark
Sent: Wednesday, November 02, 2011 8:21 AM
To: Lorence, John - PSC
Subject: RE: PSC Fall 2011 drafting request - Item 2

Here's my first draft of changes to your language:

Section 1. 196.49 (5g) of the statutes is created to read:

196.49 (5g) (a) A public utility ~~is exempt from the requirement to obtain a certification of the commission under sub. (1), (3), or (5) or an approval of the commission under a rule or order under sub. (2)~~ before constructing a proposed project if the estimated gross cost of constructing the proposed project is not more than one of the following cost thresholds: *or approve* *on section*

1. For an *electric* public utility whose operating revenues in the prior year were less than \$5,000,000, the cost threshold is \$165,000.

2. For an *electric* public utility whose operating revenues in the prior year were \$5,000,000 or more and less than \$250,000,000, the cost threshold is \$165,000 or 2 percent of *those* operating revenues, whichever is greater.

3. For an *electric* public utility whose operating revenues in the prior year were \$250,000,000 or more, the cost threshold is \$8,250,000.

4. For a *natural gas* public utility, the cost threshold is \$2,500,000 or 4 percent of the public utility's operating revenues in the prior year, whichever is less.

5. For a water public utility or combined water and sewer public utility, the cost threshold is \$250,000 or 25 percent of the utility's operating revenues in the prior year, whichever is less.

(b) Beginning in 2014, and biennially thereafter, the commission shall adjust the cost thresholds specified in par. (a) to reflect adjustments to the cost of utility construction based on the applicable industry cost index numbers published in the Handy-Whitman Index of Public Utility Construction Costs, or an equivalent successor index, and publicize the adjusted cost thresholds on the commission's website.

NOTES:

-- Instead of referring to an electric project, natural gas public utility project, water public utility or combined water and sewer public utility project, I refer to a project of those types of utilities.

-- For *electric* utilities, you refer to electric operating revenues, but you refer to operating revenues for the other utilities (e.g., you don't refer to natural gas revenues when referring to a natural gas utility). To be consistent with the other utilities, I refer to operating revenues (not electric operating revenues) of an electric utility.

-- I think *my* par. (b) allow the PSC to adjust either a dollar amount specified in par. (a) or a percentage of revenues specified in par. (a). Do you agree and is that okay?

11/2/2011

-- I omitted "calendar year" in the reference to 2014.

From: Kunkel, Mark
Sent: Wednesday, November 02, 2011 7:37 AM
To: Lorence, John - PSC
Subject: RE: PSC Fall 2011 drafting request - Item 2

I'm not going to the Assembly afterall (hurrah), so I'm in my office until a 9:30 meeting.

From: Kunkel, Mark
Sent: Wednesday, November 02, 2011 7:31 AM
To: Lorence, John - PSC
Subject: RE: PSC Fall 2011 drafting request - Item 2

John:

Your proposed s. 196.49 (5g) (a) says: "A public utility is not required to receive commission approval under sub. (1), (2), (3) or (5) before constructing a proposed project if the cost of constructing the proposed project is less than the applicable cost threshold specified in this subsection."

My first inclination is to revise the language to say that a certification by the commission under sub. (1), (2), (3), or (5) is not required... etc. However, my change doesn't work for sub. (2). It works for subs. (1), (3) and (5) because those subsections refer to a certificate from the PSC or the PSC certifying something. However, sub. (2) doesn't use those terms. Instead, sub. (2) prohibits certain public utility projects "unless the public utility has complied with any applicable rule or order of the commission." (Sub. (2) also requires a public utility to delay beginning certain projects if certain requirements regarding coops apply. I assume you do not want to affect that delay language.)

In short, I'm not sure what to do about the reference to sub. (2). Maybe your language works, but I'm not sure. Can you send me your thoughts, or maybe we can discuss it this am? I have to go to the Assembly until about 8:15 or so, so I'll be in touch a little later this am.

-- Mark

From: Lorence, John - PSC [mailto:John.Lorence@wisconsin.gov]
Sent: Tuesday, November 01, 2011 3:29 PM
To: Kunkel, Mark
Subject: PSC Fall 2011 drafting request - Item 2

Attached to this e-mail are the drafting instructions for the following item on the PSC Fall 2011 compiled list:

- Item 2, certificate of authority cost thresholds

Please incorporate this draft into the compiled draft. Let me know if you have any questions. Thanks



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3359/P1

MDK:kjf:rs

P 2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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Regen

1 AN ACT *to renumber* 196.395 and 196.491 (3m) (e); *to renumber and amend*
2 15.79 and 196.81 (3); *to amend* 196.395 (title), 196.40, 196.491 (3m) (a) (intro.),
3 196.491 (3m) (c) 3. (intro.), 196.50 (2) (i), 196.52 (3) (b) 1., 196.795 (6m) (c),
4 227.44 (1), 227.48 (1) and 230.08 (2) (mL); *to repeal and recreate* 196.491 (3m)
5 (e) (title); and *to create* 15.79 (2), 196.395 (2), 196.49 (5r), 196.491 (3m) (e) 2.,
6 196.52 (3) (b) 1m., 196.52 (3) (d) and 196.81 (3) (b) of the statutes; **relating to:**
7 commissioners of the Public Service Commission; orders and determinations of
8 the commission; certificates of authority issued by the commission; approval of
9 contracts by the commission; electricity sales from certain hydroelectric plants;
10 public utility removal of certain electric service lines; and service of notice for
11 hearings and decisions in contested cases of state agencies.

Analysis by the Legislative Reference Bureau

Under current law, a "contested case" is an agency proceeding in which the assertion of a party of a substantial interest is denied or challenged by another party and, after a hearing, a substantial interest of a party is determined or adversely affected by an agency decision or order. Current law requires all parties to a

contested case to be afforded an opportunity for a hearing after reasonable notice. Current law provides that, except in an emergency, reasonable notice consists of mailing notice to known interested parties at least ten day's prior to the hearing. This bill provides that, as an alternative to mail, reasonable notice may consist of notification by personal delivery, electronic mail, posting on the Web site of the agency conducting the hearing, or any other method that such agency determines is likely to reach the parties. As under current law, the notice must be provided to known interested parties at least ten day's prior to the hearing. The bill also provides that service of decisions on parties and attorneys in contested cases may be made by personal delivery, mail, electronic mail, posting on an agency's Web site, or any other method an agency determines is likely to reach the parties or attorneys. Under current law, such service is limited to personal delivery or mail.

Under current law, unless the Public Service Commission (PSC) specifies a different effective date, the PSC's orders and determinations take effect 20 days after the PSC files and serves an order or determination on the parties to the proceeding in which the PSC made the order or determination or on the parties' attorneys. This bill provides that an order or determination takes effect on the day after the order or determination is filed and served, unless the PSC specifies a different effective date. Current law also specifies that service must be done by personal delivery or mail. This bill allows service to be done by personal delivery, mail, electronic mail, posting on the PSC's Web site, or any other method that the PSC determines is likely to reach the parties or attorneys.

Current law generally prohibits an affiliated interest from making a firm sale of electricity of three years or more to a public utility with which the affiliated interest is affiliated. Under current law, an affiliated interest is considered to be affiliated with a public utility if the affiliated interest has specified ownership or control interests in common with the public utility. Current law defines "firm sale" as a sale in which electricity is intended to be available to a purchaser at all times during a specified period on an uninterruptible basis. This bill creates an exception to the prohibition for a firm sale from an affiliated interest's hydroelectric plant located in Adams or Juneau county to an affiliated public utility, but only if the affiliated public utility owned, operated, or controlled the hydroelectric plant before January 1, 2012.

Current law generally requires the PSC to approve contracts or arrangements between public utilities and their affiliated interests. An exception to the requirement applies if the amount of consideration involved in the contract or arrangement does not exceed \$25,000 or 5 percent of the equity of the public utility, whichever is smaller. This bill revises the exception so that PSC approval is not required if the amount of consideration does not exceed \$250,000 or 5 percent of the equity, whichever is smaller. In addition, beginning in 2014 and biennially thereafter, the bill requires the PSC to adjust the \$250,000 amount based on inflation. Also, if PSC approval is required, the bill requires the PSC to take final action on an application for approval within deadlines that depend on whether the PSC holds a hearing on the application. If no hearing is held, the PSC must take final action within 90 days after issuing a notice opening a docket on the application. If

a hearing is held, the PSC must take final action within 180 days after issuing a notice of the hearing, except that, for good cause, the chairperson of the PSC may extend that deadline by an additional 180 days. If the PSC fails to take action within the foregoing deadlines, the bill provides that the PSC is considered to have approved the application.

INSERT 3A
INSERT 3B
INSERT 3C
Current law generally requires a public utility to obtain a certificate ~~of~~ authority from the PSC before the public utility may engage in certain construction, installation, or improvement projects. This bill requires the PSC to take final action on an application for such a certificate within deadlines that depend on whether the PSC holds a hearing on the application. If no hearing is held, the PSC must take final action within 90 days after issuing a notice opening a docket on the application, except that, for good cause, the chairperson of the PSC may extend the deadline by an additional 90 days. If a hearing is held, the PSC must take final action within 180 days after issuing a notice of the hearing, except that, for good cause, the chairperson of the PSC may extend the deadline by an additional 180 days. If the PSC fails to take action within the foregoing deadlines, the bill provides that the PSC is considered to have approved the application.

Current law generally prohibits a public utility from abandoning or discontinuing any line or extension of service without the prior approval of the PSC. The prohibition does not apply to a public utility that provides telecommunications service. This bill creates another exception for a public utility's removal, at the request of a customer, of the customer's electric service drop or lateral, including any primary voltage line that is used exclusively to serve the customer.

Current law prohibits a commissioner of the PSC from serving on or under any committee of a political party. The bill also prohibits a commissioner from doing any of the following: 1) being a candidate for public office in any election; 2) directly or indirectly soliciting or receiving any assessment, subscription, contribution, or service for any political purpose from any person within or outside of the state; 3) acting as an officer or manager for any candidate, political party, or committee organized to promote the candidacy of any person for any public office; or 4) making a contribution to any candidate, political party, political action committee or legislative campaign committee.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 15.79 of the statutes is renumbered 15.79 (1) and amended to read:
- 2 15.79 (1) There is created a public service commission. No member of the
- 3 commission may have a financial interest in a railroad, water carrier, or public
- 4 utility. If any member voluntarily becomes so interested, the member's office shall

1 become vacant. If the member involuntarily becomes so interested, the member's
2 office shall become vacant unless the member divests himself or herself of the
3 interest within a reasonable time. ~~No commissioner may serve on or under any~~
4 ~~committee of a political party.~~ Each commissioner shall hold office until a successor
5 is appointed and qualified.

6 **SECTION 2.** 15.79 (2) of the statutes is created to read:

7 15.79 (2) A commissioner of the public service commission may not do any of
8 the following:

9 (a) Be a candidate for public office in any election.

10 (b) Directly or indirectly solicit or receive, or be in any manner concerned with
11 soliciting or receiving any assessment, subscription, contribution, or service,
12 whether voluntary or involuntary, for any political purpose whatever, from any
13 person within or outside of the state.

14 (c) Act as an officer or manager for any candidate, political party, or committee
15 organized to promote the candidacy of any person for any public office.

16 (d) Serve on or under any committee of a political party.

17 (e) Make a contribution, as defined in s. 11.01 (6), to any candidate, political
18 party, political action committee, or legislative campaign committee.

19 **SECTION 3.** 196.395 (title) of the statutes is amended to read:

20 **196.395 (title) Test, conditional, emergency and supplemental orders;**
21 ~~**waiver of conditions in orders**~~ **order conditions.**

22 **SECTION 4.** 196.395 of the statutes is renumbered 196.395 (1).

23 **SECTION 5.** 196.395 (2) of the statutes is created to read:

INSERT 5-14

1 ~~196.395~~ (2) As a condition of any order, the commission may not require a
2 public utility to lobby on a legislative issue or to take a specific position on a
3 legislative issue.

4 **SECTION 6.** 196.40 of the statutes is amended to read:

5 **196.40 Orders and determinations; time of taking effect.** Every order or
6 determination of the commission shall take effect ~~20 days~~ the day after the order or
7 determination has been filed and served by personal delivery ~~or, mail, electronic~~
8 mail, posting on the commission's Web site, or any other method that the commission
9 determines is likely to reach the parties or their attorneys, to all parties to the
10 proceeding in which the order or determination was made or to their attorneys,
11 unless the commission specifies a different date upon which the order or
12 determination shall be effective. After the effective date every order or
13 determination shall be on its face lawful and reasonable unless a court determines
14 otherwise under s. 227.57.

15 **SECTION 7.** 196.49 (5r) of the statutes is created to read:

16 196.49 (5r) (a) If a hearing is held on an application filed under sub. (1), (2),
17 (3), or (5), the commission shall take final action on the application within 180 days
18 after the commission issues a notice of hearing on the application. The chairperson
19 of the commission may extend the time period for an additional 180 days for good
20 cause. If the commission fails to take final action within the initial 180-day period,
21 or the extended 180-day time period, the commission is considered to have issued
22 a certificate of authority with respect to the application.

23 (b) If a hearing is not held on an application filed under sub. (1), (2), (3), or (5),
24 the commission shall take final action on the application within 90 days after the
25 commission issues a notice opening a docket on the application. The chairperson of

1 the commission may extend the time period for an additional 90 days for good cause.
2 If the commission fails to take final action within the initial 90-day period, or the
3 extended 90-day time period, the commission is considered to have issued a
4 certificate of authority with respect to the application.

5 **SECTION 8.** 196.491 (3m) (a) (intro.) of the statutes is amended to read:

6 196.491 (3m) (a) *Commission approval required.* (intro.) Except as provided
7 in par. (e) 1., an affiliated interest of a public utility may not own, control or operate
8 a wholesale merchant plant without the approval of the commission. The
9 commission shall grant its approval only if each of the following is satisfied:

10 **SECTION 9.** 196.491 (3m) (c) 3. (intro.) of the statutes is amended to read:

11 196.491 (3m) (c) 3. (intro.) ~~An~~ Except as provided in par. (e) 2., an affiliated
12 interest may not make any firm sale to a public utility with which the affiliated
13 interest is affiliated if the firm sale satisfies any of the following:

14 **SECTION 10.** 196.491 (3m) (e) (title) of the statutes is repealed and recreated
15 to read:

16 196.491 (3m) (e) *Exemptions.*

17 **SECTION 11.** 196.491 (3m) (e) of the statutes is renumbered 196.491 (3m) (e) 1.

18 **SECTION 12.** 196.491 (3m) (e) 2. of the statutes is created to read:

19 196.491 (3m) (e) 2. Paragraph (c) 3. does not apply to a firm sale from a
20 hydroelectric wholesale merchant plant located in Adams or Juneau county to a
21 public utility if the hydroelectric wholesale merchant plant is an affiliated interest
22 of the public utility and the public utility owned, operated, or controlled the
23 hydroelectric wholesale merchant plant before January 1, 2012.

24 **SECTION 13.** 196.50 (2) (i) of the statutes, as created by 2011 Wisconsin Act 22,
25 is amended to read:

1 196.50 (2) (i) A telecommunications utility certified under this subsection is
2 exempt from ss. 196.02 (2) and (6), 196.05, 196.06, 196.07, 196.08, 196.09, 196.10,
3 196.12, 196.13, 196.16, 196.18, 196.19, 196.20, 196.21, 196.219 (3) (c), (e), (g), and (L),
4 (4d), (4m), and (5), 196.24, 196.395 (1), 196.49, 196.52, 196.58, 196.60, 196.64,
5 196.78, and 196.79 and, except with respect to wholesale telecommunications
6 service, is exempt from s. 196.219 (4).

7 **SECTION 14.** 196.52 (3) (b) 1. of the statutes, as affected by 2011 Wisconsin Act
8 22, is amended to read:

9 196.52 (3) (b) 1. The requirement for written approval under par. (a) shall not
10 apply to any contract or arrangement if the amount of consideration involved is not
11 in excess of ~~\$25,000~~ the threshold amount under subd. 1m. or 5% of the equity of the
12 public utility, whichever is smaller. The requirement under par. (a) also does not
13 apply to contracts or arrangements with joint local water authorities under s.
14 66.0823. Regularly recurring payments under a general or continuing arrangement
15 which aggregate a greater annual amount may not be broken down into a series of
16 transactions to come within the exemption under this paragraph. Any transaction
17 exempted under this paragraph shall be valid or effective without commission
18 approval under this section.

19 **SECTION 15.** 196.52 (3) (b) 1m. of the statutes is created to read:

20 196.52 (3) (b) 1m. The threshold amount under subd. 1. is \$250,000, except that
21 in 2014 and biennially thereafter, the commission shall adjust such threshold
22 amount to reflect adjustments to the U.S. consumer price index for all urban
23 consumers, U.S. city average, as determined by the U.S. department of labor, and
24 disseminate the adjusted threshold on the commission's Web site.

25 **SECTION 16.** 196.52 (3) (d) of the statutes is created to read:

1 196.52 (3) (d) 1. If a hearing is held on an application under this subsection,
2 the commission shall take final action on the application within 180 days after the
3 commission issues a notice of hearing on the application. The chairperson of the
4 commission may extend the time period for an additional 180 days for good cause.
5 If the commission fails to take final action within the initial 180-day period, or the
6 extended 180-day time period, the commission is considered to have approved the
7 application.

8 2. If a hearing is not held on an application under this subsection, the
9 commission shall take final action on the application within 90 days after the
10 commission issues a notice opening a docket on the application. If the commission
11 fails to take final action within the initial 90-day period, the commission is
12 considered to have approved the application.

13 **SECTION 17.** 196.795 (6m) (c) of the statutes is amended to read:

14 196.795 (6m) (c) *Wholesale merchant plants.* The assets of a wholesale
15 merchant plant shall not be included in the sum of the assets of a public utility
16 affiliate under par. (b) 1. a., b. or c. and shall not be included in a nonutility affiliate's
17 total assets under par. (b) 2. a. if the requirements specified in s. 196.491 (3m) (a) 1.
18 and 2. are satisfied or if the wholesale merchant plant qualifies for the exemption
19 under s. 196.491 (3m) (e) 1.

20 **SECTION 18.** 196.81 (3) of the statutes, as affected by 2011 Wisconsin Act 22,
21 is renumbered 196.81 (3) (intro.) and amended to read:

22 196.81 (3) (intro.) This section does not apply to ~~a~~ any of the following:

23 (a) A service discontinuance by a public utility that is a telecommunications
24 provider.

25 **SECTION 19.** 196.81 (3) (b) of the statutes is created to read:

1 196.81 (3) (b) A public utility's removal, at the request of a customer, of the
2 customer's electric service drop or electric service lateral, including any primary
3 voltage line that is used exclusively to serve the customer requesting the removal.

4 **SECTION 20.** 227.44 (1) of the statutes is amended to read:

5 227.44 (1) In a contested case, all parties shall be afforded an opportunity for
6 hearing after reasonable notice. Except in the case of an emergency, ~~reasonable~~
7 ~~notice shall consist of mailing notice~~ notification by personal delivery, mail,
8 electronic mail, posting on the Web site of the agency that conducts the hearing, or
9 any other method that such agency determines is likely to reach the parties, to
10 known interested parties at least 10 days prior to the hearing.

11 **SECTION 21.** 227.48 (1) of the statutes is amended to read:

12 227.48 (1) Every decision when made, signed and filed, shall be served
13 forthwith by personal delivery ~~or mailing of a copy,~~ mail, electronic mail, posting on
14 the Web site of the agency that conducts the proceedings, or any other method that
15 such agency determines is likely to reach a party or attorney, to each party to the
16 proceedings or to the party's attorney of record.

17 **SECTION 22.** 230.08 (2) (mL) of the statutes is amended to read:

18 230.08 (2) (mL) One executive assistant of each commissioner of the public
19 service commission, created under s. 15.79 (1).

20 **SECTION 23. Initial applicability.**

21 (1) COMMISSIONERS OF THE PUBLIC SERVICE COMMISSION. The treatment of section
22 15.79 (2) of the statutes first applies to an individual holding office as a commissioner
23 of the public service commission on the effective date of this subsection.

24 (2) PROHIBITION ON ORDERS. The treatment of section 196.395 (2) of the statutes
25 first applies to orders issued on the effective date of this subsection.

1 (3) ORDERS AND DETERMINATIONS. The treatment of section 196.40 of the statutes
2 first applies to orders and determinations made on the effective date of this
3 subsection.

4 (4) CERTIFICATES ~~OF AUTHORITY~~ ^{AND APPROVALS. (4) (a)} The treatment of section 196.49 (5r) of the
5 statutes first applies to applications filed with the public service commission under
6 section 196.49 (1), (2), (3), or (5) of the statutes on the effective date of this ~~subsection~~ ^{paragraph}.

7 (5) AFFILIATED INTEREST TRANSACTIONS. The treatment of section 196.52 (3) (b)
8 1. and 1m. and (d) of the statutes first applies to applications filed with the public
9 service commission under section 196.52 (3) of the statutes on the effective date of
10 this subsection.

11 (6) SERVICE LINE REMOVALS. The treatment of section 196.81 (3) (b) of the
12 statutes first applies to removals that occur on the effective date of this subsection.

13 (7) CONTESTED CASES. The treatment of section 227.44 (1) of the statutes first
14 applies to contested cases commenced on the effective date of this subsection.

15 (8) AGENCY DECISIONS. The treatment of section 227.48 (1) of the statutes first
16 applies to decisions made on the effective date of this subsection.

17 (END)

INSERT 10-6